



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines


Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



232. b.

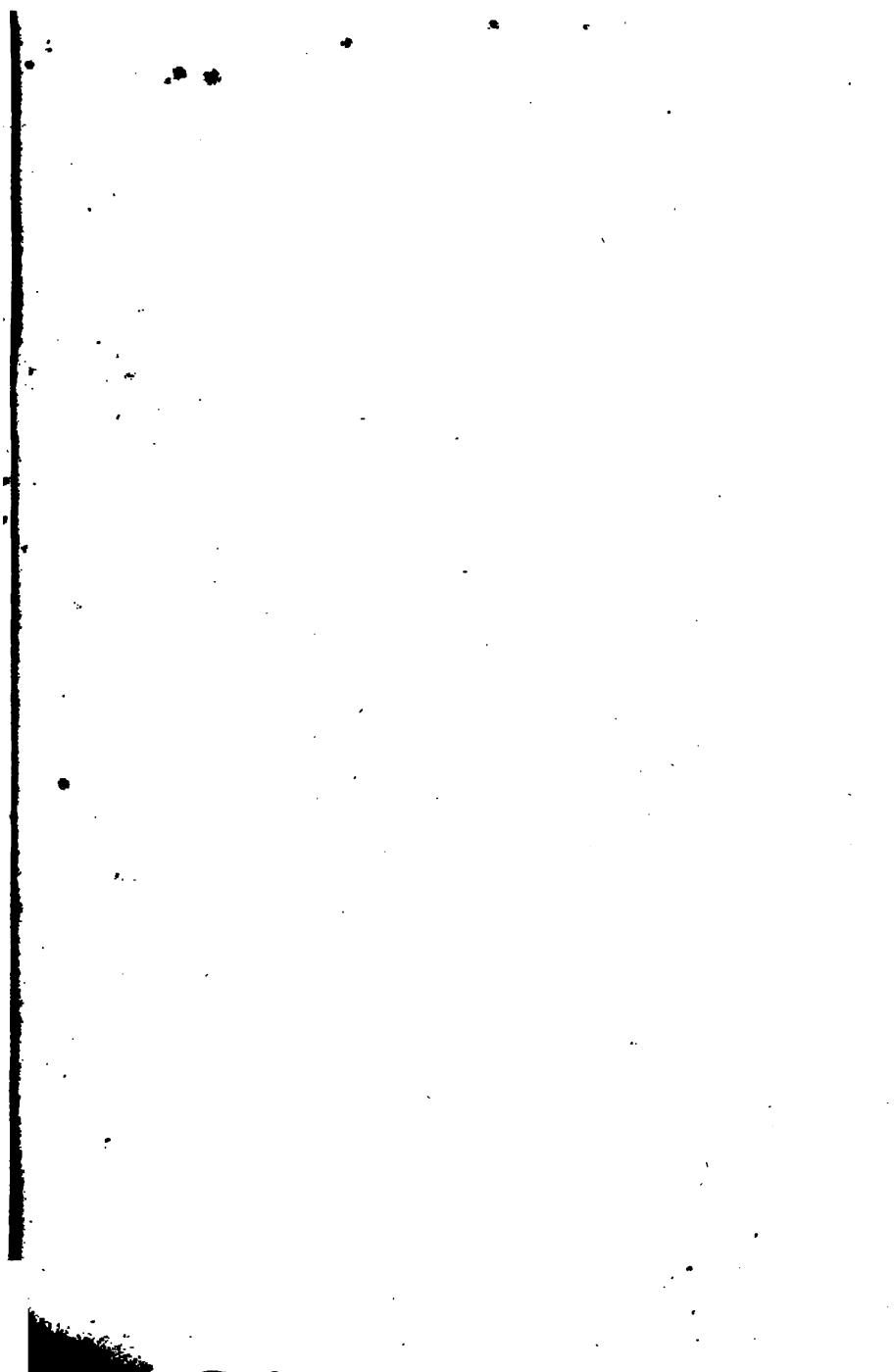
25.



600038972Z







INDISPUTABILITY DISPUTED:

A Review

OF THE

PROFESSIONS AND PRACTICES

OF CERTAIN

MODERN LIFE OFFICES.

BY

A TEMPLAR.

"Cov'n doth suffocate Right."—LORD COKE.

LONDON:

EFFINGHAM WILSON, 11, ROYAL EXCHANGE.

1852.

Price One Shilling and Sixpence.

232. b. 25.

LONDON:
REED AND PARDON, PRINTERS,
PATERNOSTER ROW.



INDISPUTABILITY DISPUTED.

THE attention of the public has been recently drawn to the question of what are termed indisputable policies of assurance; and many of the older societies, and some of the more recent, are anxiously debating among themselves, as to whether any, and, if any, what changes should be made in the principles on which they have hitherto granted assurances on lives, or in the terms they have employed, either in addressing the public, or in covenanting with their members; in the frame of the prospectus, or the form of the policy.

Now the subject is unquestionably one, not only of grave importance as affecting the interests of any single assurance institution, but of great moment to all such societies, and, in consequence, to the public at large. It seems desirable, therefore, in offering an opinion on the question in debate, not only to state it clearly, but to give, somewhat carefully and in detail, the reasons which have weighed with the writer in coming to the conclusion, that the novelty above alluded to is alike mischievous and absurd, and such as it behoves every honest man earnestly to denounce, and stedfastly to resist.

And in doing so, whilst the writer would not be suspected of any desire, unduly and with needless asperity, to decry the practices which he condemns, or hold up to public reprobation the offices which adopt them, yet, entertaining (as it appears to him on ample grounds, both of law and common sense) very strong opinions as to the impolicy and the impropriety of the course of proceeding in question, he feels that gentle circumlocutions and meek suavities of phrase would be utterly inadequate to the accomplishment of the purpose which he cherishes, and which he does not scruple frankly to avow, namely, so to put the public, and more especially the directors and actuaries of life-offices, in possession of his views and convictions, and the reasons on which they are based, as to secure for them attentive consideration; so that, in discharging for their several societies the onerous and anxious task that, in the present temper of the public mind, they may have imposed upon them, they may not improvidently recommend an alteration of their constitution, after models not worthy of imitation, nor be tempted to admire and envy some specious and showy recommendations of rival institutions, which, on closer scrutiny, fail to approve themselves to the judgment of a candid and conscientious mind. In discussing the question before us, I shall be unavoidably led to adopt a controversial tone and style, because the friends and advocates of offices to which allusion has been made above have with so much confidence justified and applauded their own principles and practice, and with so much acrimony have assailed those who differ with them (reserving, however,

their bitterest denunciations for such as follow their example continently and with reserve), that it would be impossible effectively to treat this grave matter coldly and in the abstract, when the living concrete is before us in an actual, existing, and (it is said) flourishing society. The mind, moreover, acts always with more energy and confidence when it grasps a warm reality, and deals with something substantial, than when it is occupied with frigid and lifeless abstractions; nor could I expect to secure attention and excite interest so completely by a rigorous analysis of dry law and dry principles, as by an examination of them embodied in an institution, and at work, by directors, actuaries, and agents. If in the course, or as the result of the investigation, the minds of any directors of institutions not yet afflicted with the modern mania, should be at all relieved from the pressure of an anxiety (to which they have perhaps been subject) lest they should lose some fair chances with the public, because they have been too niggardly in their professions and promises, and if (and this is of far greater moment) the public mind should be disabused, and the plague be stayed by the arguments urged in these pages, they will not have been written in vain. To have done, therefore, with preface, let us proceed to inquire, What is this almost fabulous monster, "*An Indisputable Policy*"? Now, I have just promised (alas! too hastily) to deal with realities; but I find the very subject of debate is an abstraction, a mere idea, a pure mental creation, a fiction of the imagination, *a sheer, literal impossibility*. It may be pictured to the fancy, painted,

and dressed, and decorated to please the public; paraded at annual meetings; advertised in neat pamphlets; puffed in periodicals; pampered and petted by its worshippers; and trumpeted to the world's end. But it has no existence, nevertheless. One single example of the species does not exist, never has existed, and (happily for mankind) never can exist. Men are said to have been tormented in times past with serpents of all shapes and sizes, and dragons of all dimensions and dyes; but with this greater plague of Indisputable policies they have never yet been, nor can they ever be, visited. They are as impalpable and evanescent, and unknown to human consciousness, as the famous Mrs. Harris. For how can any contract be beyond the reach of dispute, any more than an individual can be beyond the reach of attack or insult? For an instant (and only for an instant) let it be granted, that all policies of assurance might be constructed so as to be *indefeasible*—that is, absolutely exempt from the peril of being defeated or avoided, though made the subject of controversy and litigation; yet indefeasibility is not *indisputableness*, any more than certain victory in conflict is the same thing as certain exemption from conflict; and therefore the policies are not “*indisputable* policies,” though to the end of time not one of them should ever be disputed *successfully*. In fact, a director of the “London Indisputable” might as well walk about the town, calling himself *invulnerable*, as hand a policy to a customer and call it “*indisputable*.” If what he claimed for himself were true, he would be something else (less or more) than a man; if what he claims for his policy could be

true, the policy must be something else (less or more) than a contract. But do not be alarmed, gentle reader, as though I were about to reduce this discussion to a mere frivolous verbal criticism, or were minded to avoid a substantial grappling with the question before us. You shall soon be satisfied on that head. But the remarks just made are pertinent to the purpose we have in hand, though they show only, that to the ends of the earth and to the end of the world, all contracts must be open to controversy, and liable to cavil and dispute; and therefore the term "indisputable," though clearly admissible (as I shall show) when used with qualification, is, when used in an absolute and unexceptive manner, inappropriate, and, strictly speaking, untrue.

I go on now to a more momentous part of the inquiry, and without exception or reservation, hesitation or scruple, I boldly affirm that no contract can be framed, under any system of jurisprudence known to mankind, which shall, under all circumstances, by *mere force of its terms*, be rendered indisputable, unimpeachable, unchallengeable, or indefeasible. And both the truth and reason of this become apparent on a moment's reflection; for it is obvious, that the *substance* of a contract is in the mind and intention of the contracting parties, and the recitals, the provisions, and the covenants of the document in which it finds expression, are but so many evidences of that intention. Hence *bona fides* or *honest purpose* is the very foundation of all contracts, in the absence of which, on either side, there is no real contract, however various or minute the stipulations of the deed to which the parties

affix signature and seal, or however stringent and unexceptive its covenants. "Fraud," says one of the greatest of English judges,* "is an extrinsic, collateral act, which vitiates all transactions, even the most solemn proceedings of Courts of Justice;" and Lord Coke, putting the strongest conceivable case, says "it avoids all judicial acts, ecclesiastical or temporal." Surely, then, this subtle poison will vitiate a policy of assurance as well as any other contract. The point is too clear for argument. If one of the parties to an agreement enter into it with a wicked intention to over-reach, ensnare, and betray the other, and in order to attain this object should wilfully falsify or misrepresent, or should suppress, extenuate, or conceal, in reference to matters material to the contract, in every such case the object in view in the negotiation is defeated, and there is in reality *no contract*. It may look like one, be perfect in form and complete in all its parts and proportions; but the spirit of life has never entered into it, and so it never lived: in other words, it never really *was*, it only *seemed to be*. It has no sanction of law, for it was vicious in its inception, a mere abortion, an unclean thing which all jurisprudence frowns upon and condemns, and by her solemn fiat (her dearest technical rules being suspended for the purpose) pronounces null and void and of no force or effect whatever, so far as it purports to secure any interest to a party affected by a knowledge of the fraud, and, therefore, guilty of the fraud. Of course I must be understood now to use the word *fraud* in its moral sense. There is,

* Lord Chief Justice De Grey.

indeed, fraud *in law* which is not fraud *in fact*, and to that, as one of the main points on which I wish to comment, we shall advert in due course, for the purpose of showing in what manner some Assurance Societies have dealt with it. But at present we are concerned with *deceit*, or wilful violation of truth, either by a *suppressio veri* or a *suggestio falsi*. Now I repeat, that in relation to any contract whatever, proof that this species of fraud was practised nullifies, as to the guilty party, all that was done, and in such manner as that no dexterity of phrase, no amplitude of expression, no stringency of covenant, no force of cumulative terms, can avail to substantiate such a contract; no, nor any proceedings under it, however long continued and however momentous, provided they are not taken with a full knowledge of the fraud (a case we shall consider presently); for according to the principles of the civil law as well as our own, "*Quod ab initio vitiosum est postea convalescere non potest.*" Now, if this be true, then what becomes of these alleged "Indisputable Policies"? To make them "indisputable" even in the sense of "indefeasible," all law must be abolished and all equity; what, in relation to such matters, have been hitherto deemed, at all times and among all nations, indispensable conditions of validity, must be annulled, and contracts be no longer honest bargains between honest men, but formal and solemn securities executed by dupes and knaves for the comfort and advantage of the latter; in each of which the fool shall covenant with the rogue *substantially* (though probably in terms unexceptionably orthodox), to give the thing purchased, though the

purchase-money be fraudulently withheld, and to act precisely in the same manner, all the allegations on which the bargain proceeded being proved lies, as he would do had they been demonstrated truth. The only other supposition on which an Indisputable Policy could be conceived to exist, would be the impossibility of knavery among mankind,—a state of things we may desire earnestly, but cannot soon expect to see realised. But who are the directors of the “London Indisputable Life Policy Company,” and other societies founded on the like principle? Amiable men, probably—honest men, most likely—clever men, possibly. But are they equal at all to either of the two tasks before them? Can they purge the world once and for ever of all rogues, so that fraud should be impossible? or can they, when unhappily it has tainted one of their spotless policies, persuade our judges to declare them pure in the teeth of all precedents, or our legislators to make them so despite all principle? But perchance they would say, “We are in no such difficulty as you are imagining; we do not propose to keep out of courts of justice because no rogues will attempt to defraud us, but because none can succeed. We rely on no change in the morals of mankind, nor any infraction of the laws of England, but on our own penetrating sagacity—our own profound insight into motives—our own omniscient glance—our deep knowledge of character—our aptitude for the prompt detection of a cheat—our infallible scrutiny of testimony. We want no protection against knavery beyond what our own cautious wisdom will supply.” To this we subjoin—But if, with all these appliances, you fail

and are taken in, you will undoubtedly reward the clever villain, in proportion alike to the depth of his cunning and his success in employing it. The dull, clumsy rogues you may confront, detect, and defeat promptly; but the misdemeanant of skill and genius, capable of simulation and dissimulation of a high class, who shall succeed in beguiling you of one of your "Indisputables," shall never have reason to repent of his bargain.

Now, hitherto, I have assumed throughout that the object sought by those who issue what is called an Indisputable Policy is to persuade the public, that in all cases, without exception, the sum assured shall be paid, however fraudulent the conduct of the assurer may have been. I mean fully to justify this assumption presently. Meanwhile, one other reply can be imagined to the arguments above adduced. It may be said, "Granted that you are right in your view of the law, that one of our policies obtained by fraud would not, and could not, be enforced in a court of justice; yet this is quite immaterial, for we covenant with the assurer not to drive him into court, because we promise payment in any event. Our customers, therefore, have a security as good and marketable as is possible in any conceivable state of circumstances; nor could any policy of assurance which was liable to controversy, however free from taint it might on examination turn out to be, be deemed so secure as ours, which, though conceded to be fatally infirm in the view of all jurists, is never to fall into the hands of the jurists at all." But gently, my friend; pray consider. What guarantee can you

offer to your customers that this will be so? You are a director to-day, and can sign an "Indisputable Policy." To-morrow you may attend a public meeting, and puff off the security you have given, in terms to delude the ignorant, and mystify even the better informed. But you are not immortal—as a director, nor as a man. You may be out of office, or dead, before the policy becomes a claim. Meanwhile, gross fraud on the part of the assured is disclosed and demonstrated. The then directors (wiser and juster than yourselves) hesitate to pay the amount. They are sued; they plead the fraud; the verdict is for the defendant; and the "Indisputable Policy" is found to be (what you have rashly ventured to designate the policies of nearly all other Societies) *"really not worth the stamped paper on which it is written."** You cannot urge the plea that this will never happen, for you have no power to prevent it. You cannot bind your successors at the Board to abide by a fraudulent contract, though you effectually bind them if no fraud be imputed; nor can you bind the future members of your Society in any such case—no, nor yourselves even, as we have shown already. But to give you every advantage (our object being not so much to convict you of error as to ascertain the truth), let us take the other alternative. Your future directors shall pay the sum assured, though gross knavery procured the policy. One of your members, however, with a keen sense of the injustice perpetrated upon him and all honest assurers, files a bill against them: they answer by

* Report of the Third Annual Meeting of "The London Indisputable Life Policy Company.—1851."

producing their prospectus, their form of policy, and their deed of settlement, all (we assume) providing for payment in any event. To that defence there would be one of two obvious answers—either that the documents cited, whatever their phraseology, or however wide and comprehensive their language, did not include the case of fraud, and so judgment would go against the directors; or, if in direct, explicit, unequivocal terms, they did include it, then it would probably be decided that the Society must be suppressed, as one established for an illegal and immoral purpose, and adapted to encourage forgery and fraud, and therefore *contra bonos mores*, and to be condemned and extinguished under all good governments; and so, at one fell swoop, for the ridding of society of a monstrous nuisance and an intolerable evil, every “Indisputable” then in existence would be torn into tatters and scattered to the winds; and the Society itself, in agony and convulsions, would give up the ghost, amid the thunders of judicial wrath, the execrations of enraged policy-holders, and the hearty congratulations of all who desired the prevalence of truth and the welfare of mankind. If you mean what you say, and if you *honestly* intend to deal with a swindling customer as you would with one of integrity; and if, in furtherance of this melancholy design, you frame all your documents in a rigid accordance with your fundamental principle (?), and put specifically and stringently on record under your own hands and seals what you boastfully emblazon on your handbills, and take credit for in your addresses *ad populum*; if with a fatal consistency in evil you proceed to act

out all these vicious regulations, and perform all these immoral covenants, then it seems to me, that unless (as is most probable) such a course should speedily run itself out and come to an untimely end, the strong hand of the law, amid the plaudits of mankind, should grasp and crush you as the common enemy of civilisation and truth. Now, it is admitted that these are strong expressions, but are they too strong for the occasion? I conscientiously believe that they are not. If the public morals are worth preserving, if commercial integrity is worth maintaining, if we are to be kept out of the gulf of wholesale, universal, and reckless knavery and chicanery (towards which, in a mercantile community, there is always, more or less, a tendency to decline), it must be by drawing with a firm hand the boundary-line between truth and falsehood; by the cultivation and observance of rigid principles of justice; and by a steadfast adherence to them under all circumstances. Any course of conduct, especially in relation to matters of business, which has a tendency to efface the distinctions between honesty and dishonesty, to diminish the motives to the practice of the former, and multiply and enhance the incitements to the latter, is a flagrant moral wrong to society, and a fatal breach of our highest obligations both in our personal and our social capacities. I know I have the cordial concurrence of every candid reader in these sentiments, and therefore, his sympathy in the utterance, in this case, of stern and unexceptive rebuke. For what, let me ask, can be a more direct discouragement of truth, what a more unblushing advertise-

ment of a premium on villany, than to base commercial operations on the ostentatious annulling of all distinction between the two, so far as that may be done by an expressed determination to treat in precisely the same manner the honest and the dishonest, and to hold lies (if they can but contrive to pass current for a time) to be as valid as truth for the foundation of a contract? Of course, the gentlemen who originated the "London Indisputable," and kindred Associations, and those who now manage their affairs and puff their distinctive features, never imagined that they were open to censure on such grounds; nor did they ever perhaps surmise that the evils enumerated must inevitably follow from a consistent development of their principles and a rigorous adherence to their engagements. It is indeed singular that men of education and ability should be totally blind to results so obvious. But on a charge of conspiracy against truth and honour, I will admit that they are entitled to acquittal, on the ground of inadvertence, and may, perhaps, be allowed to pass from the bar of public opinion, not branded as the avowed enemies of mankind, but admonished and reproved as having put the gravest interests in peril under the influence of a poor ambition to be deemed wiser than others, and of an insane idea that they were more honest.

But these gentlemen have another defence, and one to which I turn with great reluctance. I think their innocence of harbouring any such purposes, or of intending fully and consistently to pursue any such courses as are above indicated, may be satisfactorily established. In one word, *they do not*

mean what they say. Let us then now deal with their Society, not in the abstract, or on a view of its principles and their development, but in the concrete, as we shall actually find their principles enounced and their practice defined in their own authentic documents and memorials; and in doing so, we shall take the liberty of testing their sincerity by inquiring what course they would adopt in events quite certain to occur before the Society shall have attained its majority. And on such an examination we shall speedily find reason to come to the following melancholy conclusions: 1st, The originators and advocates of the London Indisputable Life Policy Company are before the public under false pretences of a very flagrant description; and, 2dly, Their expressed opinions, their avowed principles, and the general character of their formal documents, prove them (though personally, doubtless, men of integrity) to be unworthy of the public confidence. Of course it is an ungracious task to enter at all upon this latter inquiry; but all Societies for Life Assurance who do not run with them to the same excess, are defendants in the issue raised between the London Indisputable Life Policy Company and their rivals, and some of them (to keep up the figure) may be called defendants actually named on the record, being singled out for special animadversion at the public meeting of the Society in question. They are dragged into the controversy—they did not invite it—they are stigmatised—charged (virtually) with fraud and false pretences; and so they are bound, for their own sakes, for the sake of their numerous and warm-hearted friends, for the sake of

all honest Assurance Companies, and for the sake of society at large, to accept the challenge which has been given, to plead "not guilty" to the charges preferred, and put their defence before the only tribunal which can ultimately decide the question at issue, namely, the great body of the people. If in justifying themselves they should be obliged to retort and recriminate, and should do so with justice, those who began the conflict will have only themselves to thank; if they should do so unwarrantably, the injured party will have abundant opportunities of reply. These considerations, therefore, though they cannot make the task a pleasant one, remove all scruples in entering upon it. Now, surely it will be granted readily, by the gentlemen who are advocating the London Indisputable Life Policy Company, that when a public institution is under investigation, the fairest and most satisfactory mode of ascertaining what is its leading idea or foundation principle—that which, from the prominence given to it in appeals to the public, and from the significance it may claim, in consequence either of its influence upon all the proceedings of the body who adopt it, or of any contrast which it brings to light between the society based upon it and all other institutions of a kindred nature—is to look at the prospectus of the society itself. There we are sure to find this special characteristic not only disclosed, but paraded; not only inserted, but made prominent; not only embodied, but placed high above all other topics,—flaring at the head of a handbill, as the popular cries of a party blaze in letters of gold or of silver on the silk of their banners.

Judged of in this manner, the London Indisputable Life Policy Company are precluded from denying that their claim on the public attention and support is founded on the alleged indisputability of their policies. They are estopped by the large letters at the head of their advertisement—*their name is significant, and is intended so to be*. It is not a mere mark, to distinguish their society from all others, and prevent mistakes on the part of their customers, having at the same time no intrinsic meaning or value, and serving only a purpose of convenience. To use the language of logic, it is not a *non-connotative*, but a *connotative* name. The Rock, the Pelican, the Argus, the Amicable, the Eagle, are non-connotative names. They serve to set apart the bodies adopting them severally from all others; but they imply, involve, indicate nothing as to the structure and character, or the principles and attributes, of the several societies. They are proper names, and as such have, strictly speaking, no meaning. They connote no qualities; they suggest no idea; they serve only as chalk-marks on several of a row of posts, to designate and distinguish each from all others. But the originators of the London Indisputable have selected a name with a meaning, and that meaning is quite unambiguous; and by it they are concluded, for it cannot have been adopted unadvisedly. It implies, then, that they are to issue a policy, and that that policy once issued, under no possible or conceivable circumstances, nor in any event, are they to dispute its validity; for unless the title of the company involves all this, it is inappropriate and false. But this conclusion does

not rest on a precarious inference from the signification of a word, and a motive in selecting it ; for it is directly confirmed by unequivocal allegations in the body of the prospectus itself, in which its authors, after enumerating the reasons which induce them to condemn the practice of all existing offices, proceed to say, that their society “make the necessary preliminary inquiries before granting an assurance, and, having done so, they grant unimpeachable policies”—*having inquired, they pledge themselves irrevocably*. A little further on they advert again to this topic, and place it first in a list of recommendations of their practice, saying, in absolute terms, and in large capitals, “THE POLICIES ARE INDISPUTABLE,—a condition which renders them more than ordinarily valuable as family provisions, or as negotiable instruments of security in pecuniary or loan transactions.” What, then, did the authors of this prospectus mean to convey to the world ? On what capital proposition did they mean to base all their appeals for the suffrages of the public ? Why, on *absolute indisputableness*. All their claims are founded on this, and on this alone ; and if they fail in securing conviction on this point, they fail altogether in their object. Now, are they honest in this ? That is the question. They cannot say their meaning and intention have been misrepresented ; nay, they glory in what they thus regard as the distinguishing feature and chief recommendation of their society. I boldly affirm, then, that they are not honest in putting forward this novel and monstrous claim ; and I prove the assertion out of their own most solemn documents. They say, “To remove

all doubt on this important subject" (the indisputableness of policies) "at present, and for all future time, the following clause has been inserted in the deed of incorporation of the company :—

" Clause 84. That every policy issued by the company shall be indefeasible and indisputable ; and the fact of issuing the same shall be conclusive evidence of the validity of the policy ; and it shall not be lawful for the company to delay payment of the money assured thereby, on the ground of any error, mistake, or omission, however important, made by or on the part of the person or persons effecting such assurance ; and that, on the contrary, the amount so assured shall be paid at the time stipulated by the policy, as if no such error, mistake, or omission had been made or discovered." Oh ! lame and impotent conclusion ! Is this indeed all ? Is this the utmost that legal dexterity and acumen could do to carry out the intentions of the originators of the society ? Surely it is but a meagre performance of so large a promise, if this is the best security to be had for indisputability. Why, most societies (if not all) in their practice go thus far, and some in their authentic documents are pledged to it. If this be all, you have no exclusive claim to public support, and your pretences are proved to be false ; for the words just cited will not suffice to secure one policy-holder against loss of the sum assured, if there has been any *wilful* mis-statement or suppression in a matter material to the contract. The language of your clause is *studiously adapted to the object of excluding any such case*. The conveyancer who settled your deed selected these terms as of themselves negating

the idea of fraudulent intention, and implying inadvertence merely. Statements and omissions, though material and momentous, the result of mental infirmity, as failure of memory and the like, are covered by the terms employed ; but not one wilful and intentional suppression or assertion, however trifling, which is the result of moral obliquity, can have impunity by virtue of this provision. Now, how came this to pass? Had your counsel the prospectus before him, in which you state, in substance, that having inquired, you treat the answers you get and are satisfied with as true, though they should all be subsequently shown to be false, and therefore put all assurers, honest and dishonest, on the same footing? If so, how was it that he contented himself with so inadequate an expression of your views, and so inefficient a provision for carrying them out? Did you suggest to him that a milder and more moderate version of indisputableness than the advertisements contained would be better in the deed, and thereby the two apparently incompatible advantages be secured, of a palatable prospectus and a legal instrument of settlement—the rogue being coaxed by the former to insure by a fraud, the honest being secured in the latter against all his devices? Or did your adviser hint as a lawyer, that to frame a deed in strict accordance with your professed intentions, would be alike a defiance of common sense, common justice, and the common law of the land in which you lived, and with the sanction and under the protection of which you proposed to launch your project? Or, lastly, did he not (and pray answer us candidly), under the

bondage of your retainer, and with convulsive efforts to meet your views, draw a clause to the following effect, which by the merciless pen of the Registrar of Joint Stock Companies was reduced to the safe and moderate dimensions which "Clause 84" now presents; no public officer charged with any duties under the law, or gifted with any knowledge of its principles, being capable of allowing so flagrant a violation of all natural justice and all moral sentiment to pass through his hands unchastised and uncorrected? I do hope this last hypothesis is the true one, because, gentlemen of the London Indisputable, we are now considering whether you really meant what you said in your handbills. And an attempt to insert the following provision in your deed, though very properly defeated, (whereupon you were bound, as honest men, at once to recall your prospectus, and be re-baptized by a more modest appellation,) yet the mere attempt to get it sanctioned is a strong argument for your sincerity, and one the help of which you will sorely need when we pass, as we shall presently, to some other points against you. Did you then submit the following clause for approval at the Office for the Registration of Joint Stock Companies, and fight for it valiantly and earnestly? If you did not, you can hardly claim to be considered honest in calling yourselves by your registered title, or in issuing your registered documents—"That every policy issued by the Company shall be indefeasible and indisputable, and the fact of issuing the same shall be conclusive evidence of the validity of the policy, and it shall not be lawful for the Company to delay

payment of the sum of money purporting by the said policy to be assured thereby, or of any part thereof, on the ground of any error, mistake, or omission, however important, made by or on the part of the person or persons effecting such assurance, *nor on the ground of any misrepresentation or wilful mis-statement, or of any fraudulent suppression and concealment* on the part or on behalf of the person or persons so assuring as aforesaid; and that, on the contrary, the amount so purporting in the said policy to be assured, and every part thereof, shall be paid at the time therein stipulated, as if no such error, mistake, or omission, *nor any such misrepresentation, wilful mis-statement, or fraudulent suppression and concealment* had ever been made or discovered; and in the event of any delay, or refusal on the part of the Company to pay the said sum and every part thereof, and an action for the same being commenced in the name of the party then entitled to sue on the said policy, the said Company shall be precluded from pleading to the said action *that the policy was procured by fraud, covin, and misrepresentation*; and that, if such plea should be pleaded, then the plaintiff in the said action shall be at liberty, and is hereby authorised, to reply this provision of the Company's deed of settlement as a full answer to the said plea, by way of estoppel, and the same shall be and be deemed to be a full, complete, and effectual estoppel of the Company; and thereupon the plaintiff shall be entitled to judgment for the sum demanded in the said action, and for his full costs of suit, *notwithstanding sufficient and conclusive evidence may be adduced on the trial*

of the said action of such alleged fraud, covin, and misrepresentation, and notwithstanding that a verdict may be given upon the issue so raised between the parties in favour of the said Company, any law, usage, or custom to the contrary in anywise notwithstanding." Such a provision as the above is obviously repugnant to common sense and the ordinary notions of equity prevailing in a civilized community. But I am not responsible for that, but those who issued a prospectus which can only be fulfilled by the insertion of such a clause. If a stipulation equivalent to this is needed to fulfil the promise of their advertisement (and it cannot be denied—nay, this even would not suffice for the purpose, nor anything else), the advocates of the London Indisputable, and all societies adopting their principle, must be liable to this reproach—they have deposited pledges it would be infamous to redeem, and which, to say the least, therefore, it was disgraceful to give. Put into plain language, how flagrant do such propositions appear !

But one more step in an examination of their documents will convince every candid mind that they never intended to redeem their pledges. We have glanced at their prospectus, let us now look at their policy. Is that so framed as to evince any serious intention or desire to give their customer an unimpeachable security ? All formal recital of the foundation of the contract, namely, the information conveyed in the proposal, is, indeed, omitted, and so the necessity of alleging its truth is avoided ; but the law presumes this—and if the contrary be proved, the contract fails just as much as though

the policy had recited every particular of the answers to inquiries. It then witnesseth in the usual way, that the sum assured shall be paid. But turn to the conditions endorsed on this Indisputable Policy. There are six of them; and of these, no less than four make the instrument void, and a fifth declares all the premiums paid on a policy avoided to be absolutely forfeited to the Company. Surely our senses must deceive us! This cannot be one of the irrevocable, unchallengeable, unimpeachable, indefeasible, indisputable policies, but must be regarded as an impudent fraud and forgery in the name of the Society! But, no; the document is evidently genuine, and it becomes worthless in these several ways:—on non-payment of premiums by or on behalf of the assured, —on his passing certain geographical limits,—on his adoption of certain professions,—and (within two years from its inception) on the death of the assured by suicide, duelling, or by the hands of justice. Do I complain of these conditions? Not in the least. They are just and reasonable, or may be so taken for the purposes of our argument. But what becomes of the alleged *indisputableness* of such a policy? On the happening of any one of the events on which it is made void, the chances of dispute are incurred; for, on the death of the assured, the holder of the policy may make a claim, and the directors will refuse payment, and, as the result, the *Indisputable Policy* becomes at once the subject of obstinate, prolonged, and costly litigation. I know the reply which springs at once to the lips of an opponent:—“Why, there has been a wilful breach of the conditions on which the policy was granted.” No doubt there

has. But why, in the name of common sense, do you call a policy indefeasible, which is *ipso facto* vacated in each of several different ways, and thereby becomes not voidable only, but absolutely void? I know that you profess to exclude one ground of dispute, namely, false representations and fraud when the policy is obtained. But how can that be a reason for calling your policy indisputable? To justify such an epithet you should exclude not one but all causes of dispute;—not make it unimpeachable on some one or more specified grounds, but make it so on all imaginable grounds, past, present, and future—actual or possible. If you urge that this would be ridiculous and impossible, I entirely concur with you. But then, admitting this, you are also bound to admit, that it is disreputable definitely to promise what it would be absurd and monstrous to attempt to perform, and disingenuous to use large, loose expressions in addressing the public, to which the well-considered language of your policies is utterly repugnant. For, in so acting, you wilfully raise expectations only to defeat them, and seek to snatch an advantage over rivals by unscrupulous expedients, unworthy of men claiming a reputation for integrity, and impolitic in those who would not only acquire but retain the confidence of the honest and the intelligent. However, our argument is now advancing. We have demonstrated the disparity between the promises and the performances of the London Indisputable Life Policy Company (and its imitators), the contrast between its title and its character. It is proved that their instruments of assurance are no more exempt from cavil than

those of others ; and it is obvious, therefore, that to call them indisputable, on any account, is a fiction, and that, if they are so called for the purpose of enticing customers to their shop, it is a false pretence. And so our first proposition is established, and the distinctive feature—the glory and the boast—the overwhelming recommendation of the Society in question, either dwindles to a meaningless phrase, or resolves itself into a palpable fraud. So long as language retains its significance, or words continue to be employed with any precision as representing ideas, so long must a policy of assurance, such as we have described, issuing under the title of “ indisputable,” issue under a misnomer, and circulate among mankind with a false character as well as a false name. And now the reader shall be detained but a short time longer on this subject ; for, in proving our first point, we have unavoidably anticipated our second, which may, therefore, be disposed of the more briefly. Can such a society as the one described (or any other like it) be worthy of the public confidence ? Can it appeal with any hope to a mercantile community, which exists only by the sedulous cultivation and the strict observance of principles of commercial integrity ? For, looked at from any point of observation, or under any of its various aspects, is there a single view of that feature of this Institution by which it is distinguished from its contemporaries, which shows it—I will not say worthy of commendation—but entitled to escape censure ? May it on any plea be allowed to pass without reproach ?

The devisers of this notable scheme for the attracting of business and the ruin of competitors, must

be taken to have been aware that what they promised they could not, in any manner known to the law, or on any principles consistent with equity, hope or expect to perform. Nay, they have not even made an honest effort to bind themselves legally to such performance. Yet it would really appear that they do mean, both against law and equity, to pay all the rogues with as much punctuality as the honest men; for the following language is used by a member of the Company in the hearing, and with the approval of the directors :*—"The great fundamental principle of this office is, that the moment the policy has left the directors, the person holding it has a right to come forward, when it becomes a claim, and demand the money, without the possibility of any allegation of fraud, misrepresentation, or chicanery being set up. In this Company, the owner of the policy comes forward and receives its amount without any question being asked, and as surely as stock is transferred by the Bank of England at the request of an executor, and in accordance with the will of a testator. (*Loud cheers.*)" Is it conceivable that this announcement was received with applause? Let the reader put to himself any analogous case, in which an ordinary commercial contract, entered into by a trading company, should be held valid, though founded in fraud; and let him further suppose, that at a public meeting of the company, held to glorify itself, and to inveigle the public, one of its members, amid universal acclamation, should rise and announce that "the great fundamental principle of the asso-

* Report of the Annual Meeting, 1851.

ciation is, that in the case of all mercantile contracts concluded with the company, there shall be no possibility of any allegation of fraud, forgery, misrepresentation, or chicanery being set up; but that their customers, honest and dishonest, may come forward and claim the exact fulfilment of the company's stipulations, without any question being asked, and as surely as stock is transferred by the Bank of England," and so on. How long, may we ask, would it be before so monstrous a partnership was denounced and destroyed, if, indeed, such an enormity could ever come into existence at all? But what valid distinction, for the purposes of our present argument, can be drawn between the actual and the supposed case just stated? Both are cases of contract, and of mercantile contract, and the validity of both depends upon the same condition, namely, integrity of the contracting parties on both sides. To act out scrupulously the terms of the bargain on one side, though gross evasion of them be proved on the other, would in ordinary affairs of commerce be deemed immoral as well as foolish, nor would men of integrity and common sense be found adopting the absurd practice of paying according to the strict letter of the contract, whether the article purchased had been supplied according to the strict letter of the contract or not; still less could any association of such persons be found, who would vaunt so mischievous a principle of action before their fellow-men. Is it urged, that in the case of assurance, the agreement is partially acted upon, and many premiums may have been paid, and a long time may have elapsed since the fraud was perpe-

trated? So may a fraudulent contractor, in any other case, take steps and incur expenses on his own dishonest bargain, but this will not be held to validate it. Besides, in the case of assurance wrongfully procured, the payments are themselves part and parcel of the fraud, and it is obvious mere lapse of time purges no guilt. Is it said, The assurance company could inquire, and they did so most minutely? But even if this be so, why is fraud to have impunity secured to it as a right, if it should be clever enough once to deceive, and the difference between a premium and a punishment for it be made to hinge on the acuteness of an agent or the skill of a medical man? The guilt of fraud, wilful and deliberate, is assumed and granted; why is its temporary success to be made to insure, *certainly and in all cases*, its ultimate triumph? "Only trick us at first, and you shall never hear of it afterwards. Deceive us cleverly in the inception of the contract, and we will reward you well on its completion. We make no distinctions between one and another at our office; all are treated alike as honest when they are once enrolled at No. —, Lombard-street." Does, then, fraud lose its demerit because long persisted in? And if so, how long a time is necessary for the purpose of absolving it? Twenty years? or ten? or—to give the same advantage to a lying assurer that is given to one guilty of suicide, duelling, or murder—will two short years suffice to end the miserable transaction, by sealing that fraud with your final sanction, which you stimulated by your early promises? No; you ask not an hour, not even an instant, for a *locus pœnitentiæ*. You pass the Rubicon, and leave all your scruples, your

doubts, your reluctance—with your principles, on the other side. Of the customer and yourselves, it may be said, *He has done you, and you are done.*

But no ; I had forgotten. There are the six conditions endorsed on the “Indisputable.” Surely there is hope, and the rogue may be caught in some one of these traps. Not in the first—he will be sure to pay ; the bargain he has made is too good to be lost, and so no premiums will be in arrear, for that “*omission*” is detected at once. But suppose the unhappy man should travel, (and such a customer as we are supposing is very likely to do so at the public expense,) there is the geographical condition ; this may be fatal to the “unimpeachable” in a moment. Considering the class of customers likely to be drawn to the office under consideration, it would surely have been discreet on the part of the directors, and only fair to such honest assurers as may inadvertently contract with them, to have included the British penal settlements in the districts tabooed in their condition. But if they all chance to lie without the 35th degree, let us suppose that the assured is travelling at his own cost and pleasure and not at those of the nation. He wanders into equatorial regions, he is enticed farther than he proposed by pleasure, or business, or love of science, or philanthropy, or all combined,—in a moment of inadvertence the steamer, or the train, or the diligence whisks him over the fatal 35th degree, and disease and death overtake him in a week, a mile nearer the equator than he ought to be. And you laugh his executors to scorn, when they come forward with the “Indisputable” in their hands, quite confident to “*receive its amount without any question*

being asked, and as surely as stock is transferred by the Bank of England at the request of executors and in accordance with the will of the testator." And now gentlemen, directors, you chuckle at your success. By the hypothesis it is admitted that you gave this man absolution and impunity for wilful frauds in assuring, and therein wronged, in a way too obvious to need explanation, all your honest members; but then you have at length set yourselves right. But how? You were prepared to reward him for successful villany; you ruin him for ignorance of geography. The lies as to his age, his health, his habits, you pardon and reward; the locality of his death (however casual or unavoidable), you visit with your heaviest retribution. But do not mistake me, gentlemen. I make no complaint of the condition now under consideration; it is a wholesome and necessary one; but I use it to test the propriety of your *fundamental principle*. Again, observe how the argument is enhanced when, for illustration, we select the case of a swindling assurer escaping all the conditions, and an honest one inadvertently breaking one of them. The former, let us say, represented himself as thirty years of age, as never having needed medical assistance and advice, as being the son of parents who departed this life at ninety years old, of mere decay of nature; the facts being, that the proposer was forty years of age, that he had been frequently and seriously ill, and had been under medical treatment in consequence—that his father died at fifty of *delirium tremens*, and his mother at thirty of pulmonary consumption. Fraud and conspiracy avail to give currency for all these

lies as truths, and you are pledged so to regard them. You complete the assurance, the assured pays one premium (assessed on conditions virtually determined by himself), and drops down dead of the rupture of a vessel, and you pay the sum assured, no question being asked. Another of your customers assures on answers to inquiries exactly conformable to the facts, pays a proper premium (perhaps a high one), for a long course of years, thoughtlessly goes into active service in his profession without a special bargain with you thereon, and dies ultimately in his bed of old age. And you wish his personal representatives "Good morning," after having declined with equal firmness and suavity to pay a penny of the sum so honestly assured, so unfortunately forfeited. Here also, I think you may be justified in your refusal to pay; but that is not the question: the question is, How do you make out your justification for paying in the case in which you do pay? Your proceedings confuse all our moral sentiments. You are all leniency, forbearance, and tenderness with fraud and chicanery, and all merciless rigour with ignorance and inadvertence. You have nothing but rewards for lying and misrepresentation; your treasures of vengeance are reserved for innocent mistakes: mere error is utterly intolerable to you, while guilt is blameless or commendable. You strain at the gnat as if suffocation were imminent—you swallow the camel with edifying serenity.

But look at your conduct in its relation to every honest member of your company, (and it would be wrong peremptorily to assume that you will not have

any such.) How are *they* affected by the application of your so-called principle? Is not every sixpence paid on a contract based upon fraud, filched from them for the purpose? The very guiding principle of your association is to sacrifice the honest to the knavish, to pay the wages of iniquity out of the earnings and the savings of industrious integrity. The man who pays his first quota to your funds gets less from them than his fair return, because the man who fraudulently evades payment of this amount is treated as if he contributed his full share. By how much the rogue profits by his knavery, by so much precisely does the honest man lose by his honesty. Your whole business surely is capable of exact apportionment on mathematical principles, and the profits of it,—are they not nefariously appropriated in accordance with a rule, which, could the data be correctly ascertained, might accurately be worked out, and the formula thence educed be published as an appendix to your tables, for the guidance and encouragement of speculative villains? This would be the problem,—Given the leading principles of the company, and the average acumen of an average board of directors, and an average staff of officers and agents (medical and otherwise), in detecting and defeating fraud, to find, first, the proportion between the rogues and the honest men who will, within a given time, join the society; secondly, the amounts of the assurances, severally and collectively, of the two classes, with the terms of the same respectively, and showing how they correspond, more or less exactly, with the published tables; thirdly, the profits arising from a business so con-

ducted ; and fourthly, their apportionment ultimately, under the deed of settlement, between the rogues and the dupes who constitute the body. Lay these data before Neison or De Morgan, or advertise for a prize essay to solve the problem, and let wranglers exhaust each other in mathematical rivalry, and torture themselves to find its solution. Meanwhile, surely every man of plain understanding, and unprejudiced on the question, makes up his mind at once, and settles the whole controversy by virtue of two intuitive convictions : first, that the London Indisputable Life Policy Company offers such tempting premiums to roguery that it will infallibly secure abundance of it ; and secondly, that every honest man in the Society will be defrauded indefinitely to pay those premiums,—and that, therefore, such an institution had better be left to the rogues alone, that they may prey one on another, as the members of the swell mob were invited to do, when they were all ushered into the same snug compartment at the opening of the Crystal Palace.

But now, after all, you are inconsistent, gentlemen ; you do not fairly work out your principle. Are you afraid or ashamed ? or is it only an oversight ? You make inquiries, to get the materials on which to found your bargain with a customer ; you get falsehoods, which, at the time, you cannot detect ; so you build upon them as if they were truth. Why not maintain consistency in your behaviour to such a customer ? One comes to insure with a lie in his right hand ; you greet him nevertheless as an unexceptionable proposer ; you issue a policy to assure his life for a thousand pounds ;

he comes to pay the first premium, tenders the amount in forged notes of the Bank of England, which your cashier inadvertently accepts and enters; the assured gets his receipt and his policy, and marches off triumphantly with an "indefeasible" security in his pocket, procured by a double fraud. You find out next day that the answers to inquiries are base fabrications, and you say nothing. For these the offender has, without even asking it, "full remission and forgiveness." Not a syllable of complaint escapes your charitable lips; but the day after you discover that the notes are forgeries, and nothing worth, and now your virtuous indignation is roused at once, and you rave at the assured, and repudiate and renounce your "*indisputable*" policy. But why, let me ask? Where is the real difference between a forged promissory note and a forged answer to a material query? between counterfeit truths and counterfeit coin? The premium is no more a *sine quâ non* of the contract, than the preliminary information. Then why is fraud to be deemed venial when it vitiates one, and fatal when it affects the other? The *very foundation* of the bargain is laid in certain alleged facts; the *condition of its permanence* is made to turn on certain periodical payments. On what intelligible principle do you accept fictions instead of the facts, to build the contract upon, and yet will not take gilded shillings for sovereigns in fulfilment of the condition, and as payment of the premium? Morally, the two offences are on a par; and, looked at from the lowest point of view, the first is at least as mischievous as the other—indeed, far more so. Your customer's gilded


shillings *are* shillings, with the additional value which the fraudulent gold-wash has imparted to them. You have therefore some pecuniary consideration for the contract, though one very inadequate. Besides, you will not have to take shillings for sovereigns any more; for, in all human probability, the rogue will never again be able to overreach your cashier (now roused by suspicion to caution), by a tender of counterfeit coin; so that, on this head, the first loss to the society is the only one. But false answers in the proposal are, so to speak, tendered and accepted afresh every year of the man's life; and you cannot refuse to take them, though you know their worthlessness. The lies, in all their loathsomeness and corruption, are made to stink in your nostrils every quarter or half year; and in addition to this, they reduce, perhaps by a half, perhaps by more, every payment that is made to you. They enjoy a miserable immunity to work mischief—a mischief exactly proportioned to their own flagitious enormity. You have indorsed them, and they are presented periodically for renewed sanction and renewed exaction; and therein you are visited with judicial retribution; for you first evoked the demon, and now it haunts and torments you! But I can imagine I hear the directors and friends of the London Indisputable Life Policy Company saying, "Well, your indignation has obviously outwitted itself; for your charges against us are self-contradictory and mutually destructive. You reproach us, in the same breath, for promising what we do not perform, and for performing all that we have promised. Both cannot be true." But, gen-

tlemen, I maintain that both are true. You are not *between* the horns of the dilemma—you are *upon them both*. You are guilty, and I say it deliberately, both of a false pretence in your promise, and of an infamous compliance with it in your practice. These apparently irreconcilable grounds of complaint find their justification in your anomalous proceedings. The pretence of the absolute indisputability of your policies is false; for it is neither actual nor possible. The putting it forth is fraudulent; for it is so done as to excite hopes which can never be realised, and which you never intended to realise. This is our first charge; but the second is no less true; for though you never will or can fulfil entirely your vicious engagements with your customers, you will do so, to some extent, to keep up your pretence. Many rogues will be recompensed for the encouragement of others; many honest men will be defrauded to recruit the finances. There must be some performance, to sustain the credit of the prospectus; there must be ultimate refusal to perform, to preserve the Company from extinction. Thus you will oscillate painfully between two opposite evils; and of you it may be said, "*Incidit in Scyllam, qui vult vitare Charybdim.*" A strict observance of your rash engagements would be fatal to your existence, by exhausting your funds; a uniform repudiation of them would arrest your progress, by alarming your customers. The whirlpool of financial embarrassment on one hand, the rock of public exposure and disgrace on the other, threaten your frail bark, and you must tack backwards and forwards with a miserable dexterity, in order to avoid

first the one, and then the other. Between the claims of common honesty and the covenants of an immoral contract, you will have perpetually to arbitrate. Your knavish customer will point to his "unimpeachable" policy, and strive to exact his last farthing; your honest one will appeal to truth and justice, and require that the demand be disallowed. Thus you will be incessantly occupied in attempting to effect an impossible compromise between claims hopelessly irreconcilable. Fidelity to reckless engagements will forbid adherence to just principles; protection to the honest assurer will preclude satisfaction to the unscrupulous extortioner; and so the existence of your society will pass, amid the wrathful ebullitions of disappointed knaves, and the honest indignation of those who are defrauded; and, as in all cases where principle is not regarded, you will advance on your fluctuating, uncertain, and miserable career, amid a storm blowing at the same moment from opposite points of the compass—a storm of reproaches apparently contradictory, yet really compatible, not so inconsistent as the conduct which provokes them, and not more severe than it merits.

And now I can imagine my reader saying, "When is this torrent of vituperation to cease? Surely the subject of complaint is at length exhausted." Bear with me yet, however, a little longer, and I pledge myself that you shall be satisfied that my intention is to do full justice to the Institution, whose most prominent feature has been criticised so freely and condemned so emphatically. Its authors have a plea, hitherto unnoticed,

but the consideration of which has been postponed only for the convenience of my argument. It shall not lack its full measure of attention when it passes under review. The writer is totally unacquainted with every director and patron of the London Indisputable Life Policy Company, and (as he believes) with every member of the body; and even of its existence he was unaware, until very recently, when his attention was called to some extracts from its last Annual Report, to which reference has been so often made. Nevertheless, he is forward to avow his firm conviction, that personally, every gentleman lending his name and sanction to that Company is worthy of all esteem, nor are they to be blamed for zealous efforts to promote its success by arousing and directing the gale of public favour into the sails of their own bark, that it may be wafted from the shallows and the shore to the tranquil deeps of a settled prosperity. Nor should we be disposed too narrowly to scan, or too roughly to criticise, the means that may be employed for this purpose. Moreover, it is right to add, that the chief motive for selecting the particular association, so often named for the subject of remark, is, because it is more convenient than to be dealing only in generalities, as though a specific instance were not to be had. For the same reason that a lecturer on natural history or anatomy places on his desk, and exhibits to his pupils, a living specimen of the animal he describes, or an actual example of the physical deformity whose nature and consequences he would explain and unfold, and selects for the purpose of illustration the most striking instance he can find, (the viper



with the largest venom-bag, or the man with the most distorted spine,) but cares nothing all the while for the individual examples themselves, (nothing in his argument being dependent upon them); so I, finding exactly and fully embodied in a working institution the principle I would submit to scrutiny and rebuke, keep that institution before the eye and the mind of the reader, he knowing as well as the writer that it is not the actual embodiment we care about, but only the qualities and attributes of which it furnishes a signal and pertinent example. Thus the London Indisputable Life Policy Company is a living specimen (and a very perfect one) of a vicious principle, and I direct the reader's attention therefore, and my attack, to that Company; but never theless, if my arguments have any weight at all, they bear with precisely the same force against every other institution based on the same principle, or against each of them, let me say, with a force exactly proportioned to the degree (less or greater) in which it has adopted and developed that mischievous idea.

"What then," is it asked, "is the explanation of such vehement pleading and unmeasured invective?" My answer is, Seek it in those peculiar circumstances of the case to which I now proceed to invite attention. Some fallacies may be exposed without any feeling, not so much because they are very transparent and readily disposed of, as because they are very harmless. For them a quiet syllogism or two may suffice, and if execution should not be done efficaciously, no great mischief will ensue. So, when a palpable

blunder is sure of correction as soon as pointed out, it may be corrected with unruffled calmness. But if the mischief to be apprehended from even the temporary success of the error is very extensive, and likely to perpetuate itself for a long course of years, and yet the growth and vigour of the parent error should chance to be greatly aided by incidental and adventitious advantages, which tend to embarrass the arguments likely to expose and correct it, all enhances the anxiety and stimulates the energies of the party assailing it, to such an extent as to give to his efforts to dispel the illusion an appearance of eagerness and enthusiasm to be studiously avoided in the discussion of scholastic themes. I plead guilty, then, to the charge of an unphilosophic vehemence; but then my justification is, that this is not a thesis for academic exercise, but a momentous question of high public importance, touching very nearly the most material interests of our fellow men. I seek to expose an evil which threatens with speedy ruin a class of institutions whose value has only recently begun to be fully understood and adequately appreciated, and which bade fair to meet and to mitigate some of the sorest social evils under which we have groaned. Tameness in such a cause would be treason to truth, and therefore I must fight, "not as one who beats the air," but as one who earnestly strives to beat the adversary. A barren and harmless sophism may be tranquilly dealt with or coolly neglected,—a pregnant error must be crushed energetically. I may kill a mouse (or I may let it go) with serene placidity; I strangle

a serpent with the liveliest feelings of apprehension and disgust.

So much, then, for a vindication of that tone of earnest remonstrance (and perhaps more) which has been adopted in our argument. Now, to return to our topic of debate. One of the earliest speakers at the Annual Meeting of the London Indisputable, from whose address we have already procured materials for comment, alludes to the circumstance, that other companies had ostensibly adopted the principle of "indisputability," in imitation of their example, and this idea is more fully enlarged upon in subsequent addresses; and, indeed, there can be no doubt, that this bugbear of indisputable policies has made some stir in the world, and promises to make more. Several offices are said to have followed, though not with integrity and *bona fides*, the example set to them, and the allegation derives some support from the additions to, or alterations in, the advertisements of certain Life Offices, recently made. And the disease of imaginative indisputability is fast spreading. The prospectus of a new Assurance Society endeavours to catch the public with the same bait, saying, "A fourth, and invaluable improvement, which will be carried out to the fullest extent by 'The Hope Society,' is the declaring all Policies, when once effected, free from future question, thereby rendering them *indisputable*." It would therefore appear that, whatever may be the real meaning, and whatever the imminent results of these new-fangled instruments, we are for the future to have abundance of them. Now, the mere cir-

cumstance of this *new mode* having been introduced in Life Assurance business, is itself significant. The change had a cause, and that cause is plainly pointed out in the speech of the Manager of the London Indisputable. He says: "To make policies indisputable at the time they are granted is said to be 'a premium on fraud.' I will allow others to draw their conclusions as to that; but a far more serious question arises, Whether a Policy called an Assurance (and which is really not worth the stamped paper on which it is written, except that it is *politic* for the Office to pay most of their claims when they fall due), is not of itself of the character of a fraud." In other portions of his address—too long for quotation—he adduces some carefully wrought illustrations of the evil which he is stigmatizing; arguing, in substance, that as any mistake or omission in the proposal, though unintentional, amounts to legal fraud; and, as the inquiries of the office are both numerous and minute, and involve matters of inference and opinion, as well as matters of fact, thereby rendering it almost impossible to answer them at once fully and accurately; therefore, every assurer with an ordinary Assurance Society, has no real security in his policy—so perilous is the ordeal to which it may be exposed in case of litigation. Nay, he goes so far as to hint, that they should be called "*ideal*" assurances. Now, some allowance should of course be made for a man, who is not only riding his own hobby, but is riding it in the presence of friends and admirers at the annual summer meet, and who is, therefore, stimulated

to use his own utmost equestrian skill, and elicit the animal's highest powers and accomplishments. But, surely, when liberal concessions on this ground have been accorded to the gentleman in question, it must be obvious to everybody, that there is gross exaggeration in the account which he gives of the policies of assurance, which have served our forefathers and ourselves for so long. Can they, indeed, be liable, *en masse*, to the observations he makes upon them? Are they merely fictitious assurances, ideal securities, deriving what little value they may possess, not positively from their own terms and stipulations, but negatively from the fears or the policy of the company which has issued them; so that, if the sum assured be ultimately paid, it is paid, not because the instrument under which it was claimed was not rotten enough to be broken through, but because, on a calculation of chances, the advantages seemed to preponderate in favour of satisfying the claimant. Can it be true, in reference to the majority, or even any large proportion, of policies granted by societies not called "indisputable," that, when they become claims, the question debated at the Board—when notice of the death had been given—was, "Will it be more for our interest to pay this or to refuse? to dispute, or to satisfy the claim? Will our balance at the end of the year suffer most from what will be deducted to pay this demand, if we pay it; or from what may be withheld or withdrawn in annual premiums, if we resist it?" Who can imagine that, to describe this as a common issue,

raised and discussed at the Boards of Assurance Offices, can be a fair description? It is obvious to remark, in refutation of so foul a slander, that the very existence and prosperity of the institutions so libelled, are a conclusive answer to the charge preferred. Would the practice of life assurance not only have continued, but have gone on increasing in a ratio greatly beyond that at which the population has multiplied, if the records of the courts of law had furnished any reasonable ground for concluding that a policy of assurance was a worthless, unreal security, adapted and designed to inveigle the assured to pay premiums during his life, and then leaving him to transmit to his executor, either an action against the company, or a disastrous compromise of his claim? The idea is too ridiculous to require argument to confute. Men and women *did* assure—themselves and each other; creditors assured the lives of their debtors; debtors assured their own, to secure their creditors. Husbands took out policies on the life of their wives; parents on those of children; children on those of their parents. Money was raised upon them; reversions were secured by them. Moreover, these instruments of assurance were adopted in commerce; were made the subjects of purchase and sale, of mortgage and pledge, of gift and bequest. Monied men risked their money on them, tradesmen their goods. They found their way into lawyers' offices, and shrewd, suspicious eyes scanned them. They were named in deeds of all kinds, as direct or collateral securities; and the most momentous ~~mercantile~~ and family arrangements were

made dependent upon them. And all this went on daily and hourly for years, and almost for centuries, nobody ever suspecting that all these were "ideal" assurances, with no force or vitality of their own, and furnishing in themselves no good reasons for prudent men ever expecting, that the sums purporting to be assured in them would be paid, except payment were either argued from the policy, or extorted from the fears of the directors. No, indeed, Mr. Manager; what you say cannot be true, unless we come to this extraordinary conclusion: That all mankind, being interested in various ways, and to an incalculable extent, in policies of assurance, and risking largely (sometimes even their all) on their validity, never found out, or even suspected, what you so pathetically bewail—namely, that *they were dupes* and *the policies frauds*. Nor will they now, I think, be convinced, either by your pathos or your logic. The striking circumstance, that all our old offices count their incomes in hundreds of thousands, is as conclusive a refutation of your slander as it is possible for the human mind to imagine; and, if your startling discovery could be proved true, it would furnish, I should think, a solitary instance in the world's history of the whole mercantile, and the whole legal community, being deceived, for so long, as to the substance and value of what they dealt in so largely, and settled and disposed of so frequently. If you choose to aver as a fact, and to wail over it, that there is no nourishment in beef, nor any good to be got out of it, unless your butcher should be benignant, I point to Smithfield

Market, and to the myriads of beef-eaters, to correct your error and console your mind. If you allege there is no validity in an instrument of assurance, and nothing to be recovered on it, but from the indulgence or the policy of directors, I point to the returns of the Stamp Office, under that head, and, if you persist in your assertion, you are hopelessly beyond the reach of argument.

But I am sincerely anxious (for a purpose of my own), to concede as much as may be conceded to you on this point, consistently with truth. Let it be admitted, therefore, that there exists serious ground of complaint as to the practice of all companies (if there really be any such) who construe their policies according to the law, and avail themselves of any substantial mistake as a legal fraud, for the purpose of escaping payment of a claim. Here is a hardship, no doubt, and one sometimes of very frightful magnitude. The self-denial of a life-time is left unrequited; the hope of a life-time unsatisfied. And there is generally a great aggravation of the evil in the surrounding circumstances. The life that has fallen (perhaps prematurely) was that of the head of a family, maintaining a wife and children by the toils of an arduous profession, or an extensive business, to the labours and anxieties of which he has fallen a victim; and the assurance was looked to as the main-stay of the bereaved and the desolate, when the angel of death should have visited the household. It is obvious at once, that to break this hope is to crush the fallen, and add a new pang to hearts already lacerated and bleeding. The widow and the father-

less, seeking some humble shelter where their grief may be hidden from the world, and their wounds be healed, cling to the hope which a fond and provident affection thus provided for them, out of the proceeds of labour and self-sacrifice; and if that hope wither in their grasp, they are desolate indeed! And the calamity will be incalculably enhanced and embittered, if it should chance that the misfortune overtakes them because some answer in the proposal was, unhappily, a mistaken one, and so their little bark be sunk by the leakage of so small a flaw. The flagrant disproportion between the cause and the consequence — the trivial error! — the mighty ruin! the small omission! — the fatal issue! will not fail greatly to augment the anguish of that hour of darkness. All this we fully and frankly admit; nor will Mr. Robertson himself accuse us of having given any intentionally inadequate or alleviated account of it. We have sought to enhance rather than extenuate the evil under consideration. It is proper further to state, that the existence and alleged prevalence of this evil, is said to have stimulated at once the philanthropy and ingenuity of the originators of the London Indisputable Life Policy Company, and the birth and growth of their society thence resulted; and now, they claim to stand forth as, not only the original, but the only valid, hearty, consistent, *bond fide* representatives of their principle, and boast of their office as the only one to which persons desirous of assuring should resort, if they would obtain what they alone promise to bestow,—a policy safe from all dispute. To retort

upon himself the language of the gentleman already quoted and alluded to so much, we may say, "*It has been already distinctly explained what the meaning and value of such a promise is,—that policies of this kind are not 'indisputable' policies; and the announcement, therefore, is mere clap-trap—they are not more indisputable than other policies.*"

But we are not about to return to the ground already trodden. We now assume, that what these gentlemen promise is neither impossible nor absurd; that they really mean what they say, and put forth this remedy for the evil they were so clever as to detect, and are so benevolent as to propose to cure. Then, is the remedy adapted to meet the evil? We say, without hesitation, certainly not; unless in the sense in which decapitation would be calculated to cure gout, or an ounce of prussic acid to assuage the anguish of a broken leg. The "indisputable" scheme is not the cure for an admitted disease, said to be prevalent, but the introduction of a new one, far more malignant and far more contagious than the other. It is like fighting measles with pestilence, or displacing colic by cholera, to attempt to correct a system which makes a material mistake (or legal fraud) fatal to a contract, by introducing another system, which seeks to make the contract valid, though based on villany and deceit. The former may have slain its tens, the latter will (let it but have full play) slaughter its tens of thousands. Besides, let us inquire how far the alleged evil can be regarded as demanding such a remedy, even if it were indeed a remedy. A few words will explain the point to

which I would now direct attention. The justification for the novel scheme put forward by its advocates is this : “ A man makes a mistake in one of his answers in proposing for assurance, and that ends, fifty years afterwards, in the policy being declared void, and the premiums being forfeited. This ought not to be ; it is a fraud upon the assured, and a wrong to his representatives, or the party entitled to the policy, when it becomes a claim. Integrity, no less than humane feeling, forbid the continuance of such a practice. In relation to other contracts, of less importance, it would not be admitted, and why, then, is it to be tolerated in this ? ” Now, all this granted, and more, what is the corrective which any man of common sense and sound judgment might be expected to propose ? Taking the full dimensions of the wrong, and its exact nature, would he not propound a remedy nicely adapted to meet it ? Is the fault in the law, so that its effect is universal—the rule applying indiscriminately in all cases, and working uniform mischief ? If so, the remedy will lie in an appeal to the legislature ; and a new statute must be obtained, whereby the recurrence of such wrong shall be prevented. But, suppose that for any reasons this should be impracticable, then the mischief must be corrected by some private arrangement, or some modification of the class of contracts, mistakes in which have been so artfully taken advantage of in former instances. And here our friends of the London Indisputable greet me with a cheer, and add : “ This is the right way of curing the complaint. ” Gentlemen, I concur with you with the

liveliest satisfaction, not the less that I foresee we shall fall out again in two minutes, never more to be reconciled till you are converted to common sense and common honesty—of which event I am unwilling to despair. Now, let us be sure that we thoroughly understand one the other. I repeat the words of your own prospectus, to preclude the possibility of any misconception of the point in debate: “The uncertainty which has hitherto attended the rights of policy-holders has been one of the chief obstacles to the progress of life assurance. A medical examination of the person whose life is the subject of assurance, searching inquiries made by the Life Company as to his previous habits and history, and the regular payment of the stipulated premiums for a series of years, have not been held sufficient to obviate objections fatal to policies, which may have arisen from mistake, misapprehension, or unintentional neglect on the part of the assured, or of the office; and hence, a policy-holder may not become aware of the invalidity of the policy until his claim becomes demandable, when, from the distance of time, and the death of the party whose life was assured, he has not the means of ascertaining, still less of proving, what were the real circumstances which attended the granting of the policy. The London Indisputable Life Policy Company make the necessary preliminary inquiries before granting an assurance; and, having done so, they grant unimpeachable policies.” The last sentence is immaterial for my present purpose, but I quote it to conclude the paragraph and obviate objection on your part. By your own words, there-


fore, I now judge you. The difficulty to be surmounted is, the "uncertainty which has hitherto attended the rights of policy-holders;" and this uncertainty is alleged to spring from "objections which may have arisen from *mistake, misapprehension, or unintentional neglect on the part of the assured, or of the office.*" We have to deal, therefore, with "mistake, misapprehension, and unintentional neglect;" that is, with the results of mental infirmity, which had been heretofore punished, in contracts of life assurance, as if they were crimes. Now, what remedy would any man of ordinary sagacity and good feeling prescribe in such a case? Surely, he would say, Cease to visit them as crimes; make allowance for such weaknesses; destroy not any man for a treacherous memory, nor make his contract void for a pardonable error in chronology, or an excusable blunder in the diagnosis or prognosis of disease; let no "*mistake, misapprehension, or unintentional neglect,*" vitiate his policy fatally; nor by any means "delay payment of the money assured thereby, on the ground of *any error, mistake, or omission, however important,* made by or on the part of the person or persons effecting such assurance." And now, gentlemen of the Indisputable, I can hear your note of triumph, as you exclaim, "Why, you quote the very words of our deed of settlement in your proposal, and we concur exactly with your 'man of ordinary sagacity and good feeling,' in our judgment as to a remedy." Ah! but do you? Think of that unlucky speech delivered at your Annual Meeting, which I have already quoted, about there being, in reference to

any claim, however monstrous, "*no possibility of any allegation of fraud, misrepresentation, or chicanery set up,*" and about the owner of the policy "coming forward and receiving its amount without any questions being asked, and as surely as stock is transferred by the Bank of England, at the request of an executor, and in accordance with the will of a testator." Think of your assertion in your prospectus, just cited, that having "made all necessary preliminary inquiries before granting an assurance, you grant *unimpeachable* policies." Do you not see the distinction? Are you really blind to the difference existing between things so diverse as absolution for mistake, and absolute indisputability,—between forgiveness for a blunder, and amnesty for everything,—between allowance for forgetfulness and inadvertence, and premium on deceit? If these distinctions are too subtle for your intellect to grasp, or too trivial to be provided for in your scheme, why then, gentlemen, we have the pleasure to wish you good morning, and leave you to your fate. But perhaps you say, (for I must anticipate and preclude every possible evasion,) "No, you are mistaken; we only mean to exonerate from liability for mistakes and unintentional omissions. You should judge us by our solemn documents; for instance, our deed; and there, on your own showing, we have used words which reach only, and were, you say, obviously intended to reach only, to that extent." I am bound, gentlemen, to admit that there is something in this objection; and my single remark upon it is, that you have already had the full benefit of it in an earlier part of

this argument, and the only service it then rendered you was, to convict you of flagrant false pretences in your title and your prospectus; and I really do not wish to have that indictment against you tried over again, for you will be infallibly convicted a second time, and it is painful to see respectable men so frequently condemned on such a charge. But (to appeal now to your candour and good sense) surely, if an orthodox commentary on the text of a company's documents could be expected from any quarter, it must be from its manager. He is very likely the author of the scheme, and therefore, of course, familiar with its germ, or leading idea; its whole theory probably sprang from his genius, its entire provisions were the offspring of his sagacity. But if not, it is clear that the control and working of the association are in his hands, and so far as the public are concerned, all information as to its rules and principles must emanate from, or be percolated through him. And if this be so, I am entitled to treat his gloss as explanatory of the text of their constitution, his decrees as the law, his expositions as sound, his decision as without appeal. But *he* denounces in unmeasured terms the assurance companies that profess to grant policies which shall be "Indisputable," *except in cases of fraud*, and is no less severe with others who have used the stronger terms of "*palpable and gross fraud*." What is the unavoidable inference from this, unless it is something worse than clap-trap? Why, that his Society *includes* the cases of palpable and gross fraud, as well as all other cases, and never disputes a policy under any

circumstances, or for any conceivable reason. I see no escape from this conclusion. Either Mr. Robertson's glib and supercilious criticisms of cotemporary offices, and his ready and dexterous evasions in the case of objection to his own, come to this, or they come to worse than nothing. *For his own sake* I utterly refuse to entertain the only other alternative, because the Manager of the London Indisputable is undoubtedly a gentleman, and a man of honour.

It is demonstrated, then, that this Institution has proposed to remedy the evil so often mentioned, by the issuing of policies *valid though fraudulently obtained*. And now let us see how far the bane and antidote are adapted one to the other. The mischief to be corrected is, innocent mistake fatal to a policy. The corrective applied is, fraud and conspiracy to be deemed harmless and excusable. The grievance complained of is, that, no wrong being intended, fatal results nevertheless ensue. The remedy devised is, that when nothing *but* wrong is intended, full impunity should be secured. What relation, we ask, is there between these several propositions? Are they consonant with any just principles, or coherent on any grounds of reason or truth? The problem to be solved was, how to make forgetfulness harmless; the solution proposed is, to make fraud blameless; the consequences of inadvertence were to be removed, and you remit the penalties of conspiracy. Can anything be imagined more inconsistent and absurd? It is argued in reply, "Well, granted that the proposal goes beyond the necessity of the case, still it *includes all the cases*. They are provided for,



and more, and the fact of our doing more than meet the evil, does not justify you in saying that we do not meet it, even though all beyond were mischievous as well as needless. You admit the necessity of a specific, and perhaps provide it, but we give you a catholicon, and our universal remedy does all which your special one can do, even in relation to the complaint under treatment." Is this your reasoning, gentlemen? Let us test it by an analogous case. A man is troubled with corns, and his family surgeon touches them cautiously with *aqua fortis* and destroys the intruders. In a like case an empiric instructs the patient to soak his toes for ten minutes in the fiery compound. The corns are burnt out in both cases, but over and above that, the toes of the soaker are burnt out too, and he will carry with him to the grave the cruel marks of his tortures. Now, here the special mischief is met and corrected in both cases, and by the same remedy, but in one instance that remedy is so applied as to cure the evil and do no harm; in the other, the mischiefs resulting from the wholesale application of the remedy are incalculably more serious and alarming than the original ailment. The application of our illustrative hypothesis is easy. The wrong to be dealt with remedially by all assurance offices was precise and definite, and it admitted of a curative equally precise. Some offices *have* so treated it, and have cautiously and discreetly applied the medicament to the part affected, and there they have stopped. But there are quacks in all professions, and why should assurance-offices be exempt? And so it has come to pass

that this well-understood complaint, scientifically and successfully treated by several, is ignorantly attacked by others, and unspeakable mischiefs are made imminent or certain, by the rash empiricism of those who are hardy enough (for reasons best known to themselves) to despise and ridicule the example of more scrupulous practitioners. It is curious to observe, also, that in this, as in most other examples of quackery, the pretenders are more proud of the error wherewith the truth they propound is overlaid, than of the modicum of truth so encrusted (and not unnaturally, for the error is generally their own, the truth is only borrowed to tack it upon), though the error is such as to make even the truth itself mischievous. Thus, in the case before us, the advocates and friends of the London Indisputable treat with ostentatious contempt the cure of the original malady,—inadvertencies punished too severely,—while they vaunt to the skies the fatal mischief they have wrought in making villany dispunishable. For their whole energies are put in requisition, *not*, to show how their plan meets and satisfies a pressing want, but to show *how much more* it does. They tell us, in every variety of rhetorical phrase, “We do not make our policies unimpeachable for mistake or inadvertence; we make them unimpeachable on all conceivable grounds. Our boast is not of a definite and limited unimpeachableness (which was all that was wanted, even on our own showing), but of an unlimited and universal unimpeachableness.” And all this they dare and do; and then, with a touching simplicity, announce it to

the world, with a flourish of trumpets—being all the while, so far as it would appear, totally unconscious that they are doing, in reference to the admitted evil in life assurance, what the ignorant pretender did in relation to the actual corns—namely, prescribing a remedy so wholesale as, if not at once to destroy both the disease and the patient, yet to leave the latter to groan under ills with which, either in respect of virulence or extent, the original ailment cannot be brought into competition. When charged with calling into existence, by their mode of treatment, evils of extraordinary magnitude, these reckless practitioners have similar replies; and, as the medical impostor, when reproached with the raw and ulcerated form of his victim, whose wounds his rashness has inflicted, will stick resolutely to his bath of nitric acid, and will evade the charge of having mutilated his patient, by saying, he allows others to draw their conclusions as to that, but begs to say, that a far more serious question arises, viz.—Whether all who do not adopt his fiery prescription to the like extent are not fools or knaves; so, when the author of an indisputable policy is charged with putting “a premium on fraud,” he, with a truly admirable effrontery, says, he allows others to draw their conclusions as to that, but begs to say that a far more serious question arises, viz.—Whether a policy called an assurance (that is, I suppose, one issuing from any other office but his own), is not of itself of the character of a fraud.” And so quackery keeps up its character wherever it appears; the substance always the same; the circumstances

infinitely varied;—to-day it flourishes in physic, to-morrow in divinity; then in law; then in commerce; and so it runs the round of mundane affairs; always loud, arrogant, flippancy, imperious—always shuffling, evasive, and sinister—true, nevertheless, to one point—as the needle to the pole—to its own interest.

One of the reasons assigned for the eccentric and extravagant course adopted by Societies issuing “unimpeachable policies” is so singular, fantastic, and whimsical, as to merit no notice at all in a serious argument, were it not obviously one on which their advocates lay much stress when they would assail their rivals, or vindicate their own anomalous proceedings. These persons say, “How unreasonable it is for an Assurance Company, after torturing the proposer and his medical and other referees with manifold and minute questions as to his family, age, health, and habits, and receiving specific answers to them all, afterwards to turn round at some distant time, and complain of having been deceived and defrauded. Having inquired so minutely, and on so many points, and taken so many precautions to guard against misrepresentation and deceit, it is monstrous to complain of having been duped. If, indeed, in entering into your contract, you had asked only a casual question or so, had looked at his tongue and felt his pulse, and then at once covenanted to assure the proposer, you might fairly repent and rescind, if the bargain should subsequently prove unfortunate; but with what face can you do so when you have multiplied interrogatories upon him of the most elaborate

description, and have moreover subjected him to personal examination and testing at the hands of your medical officer? For, in addition to being cross-questioned, he has been weighed, measured, thumped, stethoscoped, made to *inspire*, and *expire*, and *re-spire*—normally and abnormally,—all his infirmities, local and general, functional and organic, personal and hereditary, constitutional and accidental, have been asked about, and his manner of life diligently investigated. And yet after all this, and more, you complain ultimately if you find that any fraud has been practised.”—Now I have put this flimsy sophism as strongly as I could, to give it every advantage; but what, in plain words, does it amount to? Let the reader bear in mind that we are arguing concerning the mode in which roguery, and wiful deceit, and conspiracy are to be dealt with, and not concerning errors and mistakes, and thoughtless negligences, or even serious and formidable omissions through carelessness and inadvertence. This momentous fact being remembered, what becomes of the frivolous objection under consideration, when interpreted into the language of common sense? So interpreted it would read thus:—“In the case of a contract entered into without previous inquiry and examination, without care to guard against fraud, or the exercise of ordinary precaution, a party if deceived has grave cause of complaint, and good ground for redress. Incautiously the negotiation was conducted, improvidently the bargain was concluded, and therefore it is reasonable, that, as the man took no care of himself, the law should take care of him. The ancient doctrine of jurisprudence, “*Vigilantibus*

non dormientibus jura subveniunt " must be reversed, and for the future must be read, "*Dormientibus non vigilantibus jura subveniunt.*" Those who take care for themselves are to be abandoned by the law to such wrongs as their vigilance may be unable to protect them against, whilst around the careless, the incautious, and the reckless, ample protection shall be thrown. And this novel theory, utterly subversive as it is of all our settled notions of propriety and justice, so far as it takes effect, must tend directly to destroy all our securities for social and commercial rights. Besides, the frivolous character of this reasoning is apparent, when we observe the fallacy on which it proceeds; for it assumes that *many and minute* inquiries, answered falsely, are far less mischievous than *a few general* ones so answered; that *elaborate* fraud is not to be noticed when detected, nor a liar to be punished if only his lies are numerous and precise. Hence, no society that asks many questions should ever be allowed to complain of misrepresentation; and their claim to a remedy, when defrauded, will be in inverse proportion to the care they took to defeat the rogue. With but a short list of queries the wronged society may stand some chance of defeating a villain by the law; but with a long list their case is hopeless, and their complaint ridiculous. Yet to ordinary understandings it would seem to be plain that the guilt of a lie is aggravated in proportion to its explicitness and circumstantial minuteness, as well as in proportion to the circumspection and scrutiny it has contrived to elude, especially if, by means of precise and definite inquiries, the examinant has learnt on

what points it will be most material and profitable for him to deceive the office. A heedless generality of inquiry may be some palliation of fraudulent omissions or misstatements, for it tempts to deceit, by giving ample scope for it; but a scrupulous exactness of investigation leaves dishonesty without excuse. And it is obvious that where the fraud is least excusable, the party defrauded has the most right to complain, and the best argument for redress. But if this reasoning be sound so far as it applies to questions put and answered, it is not less so in relation to the personal examination of the party, although at first sight it would appear not to be equally applicable in that case. For be it observed, (and it cannot be too often repeated) we are dealing with roguery, and therefore, whilst it may be admitted that in the case of any honest proposal, a careful examination of the proposer himself by a competent medical officer, who subsequently pronounces him eligible for assurance, may fairly be urged as a reason why the assurers should not afterwards complain of the fatal development of any infirmity or disease, the existence or symptoms of which a minute scrutiny might have detected at first; yet, if the party originally meant to deceive, and the surgeon has been misled by false answers in the proposal, and has thereby had his attention fraudulently withdrawn from material points, the doctrine "*caveat emptor*" will not apply should the fraud be successful, and the Society be deceived. But, to preclude all quibble on this point, let us suppose that the person whose life is proposed for assurance resides at a distance,

that a country practitioner and a country agent are employed, and that, by means of conspiracy, a robust substitute is dexterously palmed off for examination instead of the frail and fading specimen of humanity, whose infirmities are to be turned to profitable account by his friends. In this case, all the scientific tests and criteria for the detection of latent disease are applied to the wrong person, and the result is a satisfactory medical report, and the issuing of an Indisputable Policy. Is it reasonable, we ask, when in defiance of all that the assurers were led to expect, the life falls in a year, that every honest member of the Company should be mulcted for the purpose of paying the wages of infamy, and rewarding a band of shameless conspirators with the proceeds of successful villany? And yet this fraud has been practised over and over again, on the *mere chance* of ultimate secrecy and success; so that no Company, though holding themselves free to punish it at any time, on discovery, can insure exemption from the risk of its being perpetrated against themselves. How then can those institutions be deemed safe which loudly promise impunity and reward to all who can succeed in deceiving them; or (to revert to the point immediately under discussion) how can even a (supposed) personal examination be held sufficient to preclude complaint if fraud should be practised?

Now we have already frankly expressed our conviction, that to visit with a forfeiture of his policy any man who has made an error, however serious, is a wrong which no society should inflict upon a customer. But it is alleged as an apology for the novel

practices herein stigmatised, that this peculiar hardship, incident to the contract of assurance, is of frequent occurrence; and the new lights on the subject have fallen with something of an exaggerated, a false, a lurid and a vindictive glare upon such instances. And certain parties have multiplied and aggravated them beyond all the limits of reason and truth, under exceptionable influences, and for sinister purposes. Nevertheless, the lights *have* fallen upon them; and, (if they really happen at all,) they *are* hardships.

Has anything, then, been done towards remedying them? In practice, it would be difficult perhaps to find any recent example of the rigorous application of the legal rule; for the policy of all societies (old as well as new) is to attract public favour by liberal procedure; so that, if their constitution does not compel them, their interests lead them to be generous to the assured. But several modern institutions have made special provision for this object in their rules and regulations, and bind themselves not to treat error as crime, or inadvertence as guilt. For instance, one highly respectable society*—(which I select for illustration, because it has been singled out by the “Indisputable” Company, for special reprobation)—declares all its “policies indisputable, except in cases of palpable fraud.” The word “indisputable” is, *very strictly speaking*, liable to objection; but, used with restriction, and in what is now perhaps a well-understood popular

* The London Mutual Life and Guarantee Society—a society not only worthy of mention as exactly illustrating the subject under consideration, but as combining very happily two most important objects in one Policy, as its name imports.

sense, it might be deemed an over-nicety to endeavour to replace it by a term logically more accurate, but really less intelligible. "Fraud," as we have seen, vitiates all contracts; and to make this reservation is therefore superfluous, so far as the law is concerned; but the parties employing it were probably induced expressly to name what in jurisprudence is tacitly assumed, lest, by omitting the qualification which the word imports, the public might be deceived, and the company be thought liable to the charge of a false pretence; and the word "palpable," it can hardly be doubted, was added for two reasons—1st, To show that what was meant was moral fraud or deceit, as distinguished from legal fraud, or mistake, or inadvertence; and 2ndly, To intimate, that the misstatement, or omission, of which, alone, advantage would be taken, must be of a character so serious and startling, and made under such circumstances, as that, any disinterested person informed of the facts, however charitable or lenient in his constructions, would feel himself shut up to the conclusion that the misstatement or omission was wilful and fraudulent, and such as no rational man could have been guilty of, unless under the influence of a determination to deceive and overreach the society. Now this is honest to all parties, and to this extent (supposing we are right in our interpretation of the language before us, or of similar terms employed by other offices), all societies may fairly go; nor is there anything in these pages which at all implies any censure (but the reverse) of such a course. For if it is intended, in point of fact, never to dispute a

policy on account of an error, or to make it void for an oversight, these *bond fide* intentions in such a matter may fairly be stated in plain, incontrovertible terms, on the face both of prospectus and policy ; so that no man can mistake the principles on which the Society proposes to contract with him, if he assures with it. But let Assurance Companies go no further. To that point their course is clear and unambiguous ; a single step beyond it, and they are on ground treacherous and untenable. So far, a scrupulous equity bears them company, if it does not lead them on ; an inch further, and they are in a region to which (as it seems to me) law and equity, common sense and common honesty, can never follow. Being hearty and sincere in their desire fully to meet the evil (less or greater) which all deplore, and being willing, for the accomplishment of that object, to do more than strict commutative justice would exact, they may, under the influence of such feelings, eagerly and enthusiastically adopt and vindicate a course which puts their society, not only on a footing of strict integrity in respect of its engagements with its members, but on one which enables it to give play to sentiments of high honour and liberal principles of construction in relation to such engagements ; so that not only shall no unfair advantage be taken of a slip, but the utmost latitude and indulgence shall be allowed in interpreting a policy once issued. Yet, that having been done, no inducement should prevail with them to do a tittle more, or to promise it. Ample allowance for infirmity ; no impunity for crime ; all tender sympathy for those who err ; nothing but strict law for such as defraud. The taunt

of those who have taunted them before, that to leave fraud without an amnesty, as well as error, is to leave open that "which cannot fail to lead to many technical difficulties, and which may consist of purely unintentional mistakes," is one equally ignorant and ill-natured, and may easily be endured with silent contempt; or, if reply to it were needed, the earlier pages of this pamphlet might be quoted as showing some of the consequences of ostentatiously absolving a rogue. It is obvious, to every man who is capable of understanding the propositions of an argument, that it is for the protection of the honest that the fraudulent are punished, and that, in relation to contracts of assurance in a mutual office, every payment to a person who has been guilty of deceit is abstracted from the fund which rightfully belongs to the whole body of members who have dealt fairly by the Society.

And this leads me to mention another and (as it seems to me) a most important reason for resolutely refusing to advance a single step further than above indicated; and that is, that such a course directly perils the stability of the Society. *Additional security to Policy-holders* is the pretext put forth for the issue of Indisputable Policies; and this is the only reason assigned in justification of them; and so overwhelmingly forcible is that reason considered, that the imminent risk, or the absolute certainty, of incurring evils frightful both in number and magnitude by promising such instruments to the public, and by granting what shall be called and deemed such, is treated lightly, and the grave apprehensions expressed by sensible persons on the subject are flip-

pantly spurned, and the objectors themselves treated to a supercilious and ill-mannered sneer. Every consideration of what is due to public policy and social right is to be sacrificed, that the persons assured with the London Indisputable Life Policy Company may be exempt from "the uncertainty" which is supposed hitherto to have attached to the rights of others of their class. The unity and simplicity of the object contemplated by this Association, therefore, are worthy of all admiration, however much we may mourn to see honour and honesty, and other little matters of that kind, outraged and trampled in the dirt in the pursuit of it. Let us hope, however, that having sacrificed so much for one single advantage, the innovators have secured that one firmly in their grasp. Alas! that we should be compelled to close a pamphlet denouncing their principles and decrying their practices, by demonstrating the fallacy of their promises—but so it is. This boasted "security" is as chimerical as the means that have been adopted to secure it are culpable. In "selling all" to purchase this "one pearl," they have undoubtedly, in the eagerness of the bargain, sold their customers also. *Safety* has been sacrificed to *security*—the *thing itself* given away, to bribe the parties concerned to believe the *promise of it*. This is easily demonstrable, and the originators of this unprecedented company shall begin the argument which proves it, by a clear and pertinent statement appearing in their prospectus. It is as follows:—"By the practice of Life Assurance, the party assured is required to make such payments

annually, or otherwise, as, with their accumulations of interest, are considered adequate to enable the assuring company to pay the sums insured when they become due; *and a prudent regard for the security of the assured and the safety of the Institution requires, that the premiums shall be fully sufficient, under all circumstances, to meet these engagements.*" No doubt it does; this is our starting-point. But the basis, as everybody knows, of all contracts of assurance, is laid in certain averages, which have been obtained by the proper reduction and arrangement of innumerable returns; and these averages, once accurately ascertained, mathematical calculations enable those conversant with these abstruse subjects to draw up tables or formulæ, showing the terms on which it will be discreet for a society to insure the life of a proposer of sound constitution and unexceptionable engagements and habits. On the footing of such tables all life assurances are effected, and the business done is only safe so long as these settled rules are accurately observed. It is plain, that any departure from them is, *pro tanto*, a departure from justice to the assured, or justice to the assurers. If it is a wrong to the former, he is injured, and should be compensated; but if it is a wrong to the latter, the stability of the society is to that extent perilled, and an indefinite number of errors on that side will end in making it absolutely unsafe. Of course, this result comes to pass, sooner or later, in proportion to the number and character of the departures from the settled rules, and is utterly unaffected by the proximate cause of those departures, whether that

cause be mistake or fraud. But though the consequence of the errors be utterly independent of their cause, their character and amount depend directly upon it; and, while all deviations from truth, which are the result of inadvertence ignorance, or mistake, are certain to fall within definite and narrow limits, to be few in number, and unimportant (comparatively) in their nature, those which are the offspring of design and malevolent purpose will multiply beyond all the calculations of prudence, and, despite all precautions against them, may speedily reach a point at which they will peril, not the prosperity only, but the very existence of the society affected by them. To this *risk* all assurance companies are exposed; but they find ample protection against it in the common law of the land, which annuls and vacates all fraudulent contracts of assurance, and forfeits to the use of the injured company the premiums paid by the wrong doer, by which means the fraudulent are either deterred from attempting to swindle, or (if detected) defeated in their purpose. It is only in cases of such clever villany as eludes all ordinary circumspection that a fraud can eventually succeed; and hence, the chances of success being so narrowed, and the penalties of detection so heavy, comparatively few are found to run the hazard of the speculation. But how many will rush eagerly into it as soon as all obstacles are removed, by their being told, that to pass the preliminary ordeal shall at once entitle them to run their whole course of deceit unchallenged and unpunished, and qualify them to receive the wages of infamy at the time appointed!

And now, what chances of stability will a society possess, which numbers in its ranks an eager crowd of such assurers, each paying a premium greatly below the tabular rate, and thereby periodically and shamelessly robbing the association of its rights? How mournfully will the honest members recall, in this state of things, the language we have quoted above, and with gloomy forebodings remind one another, as the society declines rapidly towards bankruptcy and dissolution, that a "prudent regard for the security of the assured and the safety of the institution, which requires that the premiums shall be fully sufficient, under all circumstances, to meet their engagements," should not have prevailed with the directors to refrain from public and flaming advertisements of rewards for successful roguery, or, at the least, have deterred them from doing so under the mocking pretence of giving to their honest and unfortunate customers rights free from "the uncertainty which has hitherto attended" those of policy-holders in other societies. "*Free from uncertainty!*" why, in one sense it is unhappily too true; for while, in all other assurance companies, it is *uncertain* whether the fund, which belongs rightfully to the honest assurers, will or will not be to some trifling extent invaded by the rogues, in such as we are now considering all that "*uncertainty*" is removed, and the melancholy satisfaction may be enjoyed, of knowing, without doubt, that the true are plundered indefinitely to reward the false. In any other sense, all former uncertainties are as nothing when compared with the *perilous* insecurity introduced by an indis-

putable company. The mathematical science which had enabled us to reduce the most fluctuating and inconstant of all human affairs to the limits of an intelligible rule, is rendered nugatory and worthless by the introduction of a new element, fierce and ungovernable in itself, and wantonly stirred and stimulated by novel excitements. Hence, all former results are rendered useless, and the societies based upon them, and the business effected by their aid, made mischievous and unsafe. For what can a doctrine of probabilities do towards reducing to a formula the chances of fraudulent design and flagitious conduct? And what hope can be entertained of arriving at accurate tables of assurance, if, into the uncertainties of natural life we must multiply the more licentious irregularities of the moral feelings, and then reduce by algebraic skill elements so wildly mutable to order and stability? Yet this hopeless task must be undertaken and accomplished by the actuaries of those institutions which first arouse the slumbering propensities of dishonest persons to a vicious activity, and then contract with them on the footing of their being men of integrity. One of the data on which these gentlemen must calculate before they can safely effect a single insurance on their principles, is the number and average amount of the frauds which will be perpetrated upon them in the course of their business. If this has not been done in any such case, the society is based upon sand. If it has been done, then let the results be published to the world, and let us know exactly how much *per cent.* has been added to the premiums of the honest, to enable

the company safely and comfortably to satisfy the rogues.

And now, courteous reader, I will release thee with a word of caution and admonition. Have thou nothing to do with such institutions as we have canvassed and condemned together. The only boon they offer is impunity to a rogue; but that *you* can never need. But if you join them you must pay out of your own pocket for the costly luxury of absolving a criminal and rewarding his crime. Then stand aloof. The most ancient and illustrious of contemporary Offices, no less than the more recent and unknown, which eschew the modern invention, need not shrink from the issue of any candid scrutiny or fair comparison which may be instituted. Minor improvements, both in their constitution and working, are daily being effected, and a growing experience may detect blemishes and faults which will require correction. But rest assured, that our fathers have been too wise and prudent, and the world is now far too old to admit of any startling novelty in Life Assurance which will be as safe as it is new. Let all proved errors be ingenuously admitted, and cautiously and effectually corrected; let all real deficiencies be promptly and fully supplied. But in doing so, let us scrupulously hold ourselves clear of all rash innovations in what may be called the substance and principles of Life Assurance; nor be seduced or frightened from the beaten highway of common sense and common honesty, either by the flaunting banners or the flippant scoffings of those whose new lights, however garish, are but leading them to a quagmire. For a time,

the unreflecting among the public may be deceived by loud talking and large promises, but even these not for long. And as for the reflecting and the intelligent, the sober-minded and the honest, they will quietly compare the professions respectively of the innovators and their rivals, and the result will be a conviction on their own minds, in favour of the latter. They will think those who are most chary in making a promise will be the most exact in fulfilling it; that those who are careful to limit their engagements are purposed honestly to do whatever they may engage for; whilst those who are hardy and reckless in pledging themselves—using the widest terms in the loosest manner, will not be over-scrupulous in the observance of obligations so rashly incurred, just as he who contracts with a heedless disregard of price is proverbially the man to whom all prices, high or low, are alike, seeing that he never intends to pay at all. Besides, as above intimated, how can honest people be interested in any way in joining a society whose *single distinctive feature* is absolution for fraud? For those who are desirous of impunity and reward for their crimes, the London Indisputable is an asylum always open, and its claims upon such are undoubted and unanswerable. But to the same extent to which it is a boon to those, it is a curse to all others. If they perform what they promise, they rob the innocent to bribe the dishonest and reward the guilty: if they do not perform it, they are chargeable themselves with imposture and deceit. *Against* their own avowed principles, or *on the abandonment of them*, they ought not to succeed: *upon* them, and *in pursuance of* them, the more

they appear to succeed the more certain are they to fail. The ruin will not ensue immediately, but eventually it will come in like a flood. For a time all may seem fair and flourishing; but when embryo frauds shall have blossomed and borne fruit in heavy, numerous, and unexpected demands, then the bubble will burst, and society be happily relieved of what is now the newest and most specious form of quackery.

